IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 189 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SARVODAYA KELAVANI SAMAJ

Versus

SAURASHTRA UNIVERSITY

Appearance:

MR SHIRISH JOSHI for Petitioners

MR AR THACKER for Respondent No. 1, 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 29/03/2001

CAV JUDGEMENT

1. The Petitioner No.1 Trust is running Arts, Commerce & Science Colleges at Rajkot. The trust started Diploma in Medical Laboratory Technician Course (DMLT) during session 1998-99, which was affiliated by the Government with the approval of the respondent Saurashtra University for one year. The diploma course is of one

year duration. During the academic session 1999-2000 eventhough affiliation was not granted by the Government, the course was completed and the successful candidates were issued diploma. During academic session 2000-2001 the respondent University took up the matter with the trust and petitioner No.2 Principal of the college regarding admission of number of candidates in DMLT course. The University after obtaining the information regarding infrastructure, equipments, teaching staff etc. the college was intimated its decision that not more than 40 students be admitted in DMLT course during academic session 2000-2001. The Syndicate of the University took the aforesaid decision of giving affiliation to the petitioner college for academic year 2000-2001 on fulfillment of certain conditions, that is the appointment of teachers, lecturers, professors and providing facilities for laboratory etc. It is stated in the petition that the trust had made necessary infrastructure ready and incurred huge expenses to equip the laboratory and library. The college has also forwarded the list of teaching and non-teaching staff working in various colleges under the trust. During the academic sessions 1998-1999 and 1999-2000 the college admitted 80 students for DMLT course but for the academic year 2000-2001 the University after considering strength of the teaching staff and other infrastructural facilities available in the college, restricted the admission to 40 students only. However the petitioner trust and the college did not adhere to the instructions of the respondent University and Vice Chancellor and have admitted about 80 students in DMLT course. The Registrar of the University communicated the decision of the University by letter dated October 06, 2000. It is stated that the University has no right to decide the number of students to be admitted in any course. Having felt aggrieved by the order of the University dated October 06, 2000 the petitioners challenge the said order as arbitrary and prayed for quashing the same. However, the petitioners college requested the University by its letter dated 11-10-2000 to permit the college to continue the course with 80 students. Thereafter the respondent University approved the admission of 40 students and the list of the said 40 students were communicated to the petitioners college by letter dated 17-10-2000. The college altogether forwarded 69 applications to the University for admission, however the University approved the admission of 40 students only. The Principal of the college met the Vice Chancellor on October 20, 2000 and requested to approve admission of 69 students who have applied for DMLT, but the University did not approve the admission of any candidates beyond 40 students. It is

further stated that the DMLT examination is due some time in May 2001 and the petitioners college has already admitted 80 students and therefore all the students are to be permitted to appear in the diploma course. It is further stated that the University has communicated their decision only on October 06, 2000 but before that the petitioners college has already admitted 71 students in DMLT course, and therefore, at this stage, the University has no right to debar the candidates from appearing in the examination. Accordingly, petitioners have also challenged the order of the University dated 17-10-2000 by which the university has approved admission of 40 students only for DMLT course.

2. The respondent University and the Vice Chancellor filed their joint reply in which they have denied all the allegations made by the petitioners. It is further stated that the DMLT course was recognised for academic session 1998-1999 for 40 students. Thereafter, on the request of the petitioner college the University granted permission for 80 students for academic session 1998-1999 only and the said sanction was given subject to certain terms & conditions mentioned in the order of the University dated 4-10-1998 at Annexure-A to the reply. It is stated that, during the academic session 1998-1999 and 1999-2000 the petitioners college did not appoint required number of teaching staff and the education was imparted by non qualified staff. It is further stated that, after June 2000 the petitioners college took steps for appointment of teachers and they have forwarded list of the teachers selected by them to the University by letter dated 3-10-2000 which was received by the University on 9-10-2000. The Registrar of the University by letter dated October 16, 2000 called for particulars from the petitioners college and the college furnished the particulars by its letter dated 25-11-2000. On scrutiny the University found that the selection committee was not properly constituted and no expert on the subject was taken as member of the selection committee. The University informed the college regarding the defect in the constitution of Selection Committee. It is also alleged that the petitioner college did not appoint qualified teachers and thus violated the conditions for affiliation. It is further stated that on 11-7-2000 the respondent Vice Chancellor called the Principal of the college and informed him that the college can admit only 40 students in DMLT course during academic session 2000-2001. It is also stated that the petitioners trust through its representative approached the Vice Chancellor on 25-7-2000 and the University authority made it clear that, during academic session

2000-2001 the college cannot admit more than 40 students in DMLT course. It is also alleged in the reply that the petitioners college being a self-financing college their interest is in admitting maximum number of students after collecting donations and high fees and they do not give any attention for imparting qualitative education by appointing competent teachers. It is also stated in the reply that the petitioner college was informed by the University not to admit any students after 26-7-20000, but the petitioners college admitted students even in August and September 2000. In the reply it has been stated that on inquiry the University was satisfied that the college has only 3 lecturers for DMLT course and the name of the 2 lecturers has also been shown in BMLT course. It is further stated that the college has shown one Thakker Vipul as lecturer of DMLT but said Thakkar Vipul is a Laboratory Assistant and he cannot act as lecturer of DMLT class. The petitioners college by letter dated 31-8-2000 sent a list of 53 students to the respondent University to approve their admission as required at para-88, 3(A) and 3(B) of the Saurashtra University Ordinance. However the University has approved admission of 40 students only for the academic session 2000-2001 in DMLT course. It is also submitted that the petitioners college has suppressed material facts and violating order of the respondent University admitted students beyond 40 and therefore any candidate beyond 40 cannot be permitted to appear in the examination. It is also stated that, having regard to the teaching staff and laboratory facilities available, the University approved admission of 40 students and any student admitted beyond aforesaid number is at the risks and peril of the petitioners college. It is also stated that the Syndicate of the University has approved the decision of the Vice Chancellor communicated to the college by letter dated October 06, 2000 for granting permission to admit 40 students in DMLT course. Consequently the respondent submitted that the respondents cannot permit the students to appear in the examination whose admission has not been approved by the University.

3. I have heard Mr. Shirish Joshi, Learned counsel appearing on behalf of the petitioners. Learned counsel for the petitioners submitted that the affiliation was granted to the college for starting DMLT course in the academic session 1998-1999. It is an admitted fact that the said affiliation was given for one year and in the academic session 1999-2000 no affiliation was granted to the college for admitting students in DMLT course. However the University has subsequently approved the

admission of students and has also issued the diploma who has successfully completed the course. Mr. Joshi also submitted that in anticipation of approval and affiliation from the Government and respondent University, the petitioner college admitted 80 students before 25-7-2000. Learned counsel agree that the Registrar by its letter dated 26-7-2000 informed the petitioner college not to admit any further students in DMLT course. Learned counsel for the petitioners further submitted that, before receipt of the said letter the petitioner college had already admitted 80 students in DMLT course and the college authority took up the matter with the University to approve admission of 80 students in DMLT course. The aforesaid arguments have been strongly opposed by Mr. A.R. Thacker, Learned counsel appearing on behalf of the respondent University. It is submitted by Mr. Thacker that the college cannot admit any candidate without approval of the University. Learned counsel submitted that the Ordinance of the Saurashtra University clearly provides that the admission in any college can be made only after approval of the University. It is further submitted by Mr. Thacker that the petitioners college being a self-financing college are interested in admitting more students as that will give them more money towards capitation fee and donation. Mr. Thacker also argued that the college continued their admission even in the month of August and September in spite of the order of the University and that they are not permitted to admit more than 40 students.

4. In view of the rival contentions by the parties, it is necessary to examine whether the petitioner college has completed admission of 80 students before 26-7-2000, that is the date on which the University informed the college about the admission of 40 students in DMLT course. In this connection the letter of the college dated 31-8-2000 at Annexure-IV is required to be considered. It appears from the aforesaid letter of the petitioner college dated 31-8-2000 that the college furnished names of 53 candidates proposed to be admitted in DMLT course. Along with the letter the petitioner college has also forwarded two cheques to the University for a sum of Rs.29,100/- being the enlistment fee and development fee for the aforesaid 53 students. From Annexure-IV it further appears that in the aforesaid letter petitioner college has sent the name of 53 students. It is therefore evident that, as on 31-8-2000 the petitioner college had 53 application for admission in DMLT course. Mr. Thacker, learned counsel appearing on behalf of the University submitted that, even though the petitioner college has forwarded list of 53

candidates the college has actually forwarded 37 application forms filled in by 37 students. It is therefore evident that as on 31-8-2000 there were 37 application forms for admission in DMLT course. Consequently the arguments of Mr. Joshi learned counsel for the petitioners appears to be wholly baseless that admission of 80 students have been completed by the college before 26-7-2000. It further appears that the college by its letter dated 11-10-2000 at Annexure-D forwarded 16 applications along with two cheques, one for Rs.8000/- and another for Rs.800/-. The petitioner college along with letter dated 11-10-2000 (Annexure-D) forwarded 16 more applications to the University for admission in DMLT course. Consequently it is evident that the college has altogether forwarded 69 applications for admission in DMLT course. It is not clear how the petitioner are claiming that they have already admitted 80 students before 26-7-2000 when many applications are received even after 31-8-2000. It appears that the University has altogether received 69 applications for admission in DMLT course. 16 applications were forwarded by the petitioner college along with its letter dated 11-10-200 and therefore it appears that learned counsel for the University Mr. Thacker is correct in his statement that, along with letter of petitioner college dated 31-8-2000 the University received only 37 applications. From the foregoing facts it is clear that the petitioner has admitted students even after 11-10-200 in DMLT course and it is not correct that the petitioner has completed the admission of 80 students before 26-7-2000. It is further evident that, till 31-8-2000 there were only 37 applicants for admission in DMLT course in petitioners college. Therefore it is clear that well before 31-8-2000 the respondent University made it clear to the petitioner college that they should not admit more than 40 students in DMLT course. It is argued by Mr. Thacker, learned counsel for the University that the petitioner college being a self-financing college is charging exhorbitant fees from the candidates and they are more interested in admitting maximum number of students without adhering to the quality of education. The submission of Mr. Thacker gets support from the affidavit-in-rejoinder filed by the petitioners. From para-18 of the affidavit in rejoinder it appears that they are charging diploma course fee of Rs.37,050/- from each candidate. Eventhough the petitioner college is realising exhorbitant fees from the candidates, no steps are being taken by the college authority to improve the quality of education by appointing competent teaching staff. From the statement furnished by the petitioners along with their letter dated 16-8-2000 it appears that

there are 5 teaching staff for DMLT course in the college. Out of aforesaid 5 teaching staff one is a Laboratory Assistant and 2 teaching staff are also shown as teaching staff of the Degree course. Therefore it is evident that there are only 3 teaching staff for DMLT course. The University with a view to impart qualitative education prescribed norms regarding teacher-students ratio. It is submitted by learned counsel for the respondents that according to the recommendation of the National Council of Education the University has accepted the teacher-student ratio as 1 : 12. However, the University is permitting in exceptional cases the teacher student ratio at 1 : 15. Having regard to the number of teaching staff in the DMLT course in the petitioner college, I am of the view that the respondent University has correctly taken a decision that qualitative education is not possible by 3 teaching staff if the students strength is more than 40. Accordingly the University has fixed the number of admission in DMLT course at 40. Inspite of the decision of the University it appears that the petitioner college has illegally admitted 80 students for which the University cannot be held responsible. The admission in various Medical and Technical courses is governed by different statutory provisions, including regulations and instructions framed by different Acts and Rules. During last several years efforts have been made to regulate the admission in technical colleges in order to achieve academic excellence. The admissions in colleges are controlled by the University but the attempt of the University are being flouted by some institutions only to make financial gain by admitting more students than the standards fixed by the University. It cannot be disputed technical education requires infrastructure to cope with the requirement of giving proper education to the students who are admitted. Taking into consideration the infrastructure, equipment, staff, the number of admission is fixed by the University. This power of the University cannot be disturbed as that will create an imbalance in qualitative education. It is an admitted position that, in July the University has made it clear to the petitioner college that, they cannot admit beyond 40 candidates in DMLT course having regard to the infrastructural facilities available in the college, and also having regard to the teaching staff for the DMLT course. It is also evident that till 31-8-2000 the petitioner college received only 37 applications for admission in DMLT course. Therefore, it is clear that if the college has admitted 80 students then the admission of 40 more students are illegal. Nothing wrong has been committed by the University in communicating its decision by letter dated October 06, 2000 and October 17,2000.

Since the admission of students beyond 40 is not approved by the University, I am of the view that those candidates even if admitted by the college cannot be permitted to appear in the DMLT examination that may be held in the month of May or June 2001. The petitioners are fully responsible for illegal admission of the students who have been admitted without approval of the University. Therefore, I am of the view that t[he remaining 40 students whose admission has not been approved by the University should be reasonably compensated by the petitioners for the loss of one academic year of the students who has been admitted in the DMLT course without approval of the University. The petitioners have admitted excess number of students violating orders of the University and it was within the knowledge of the petitioners that they cannot legally admit the students beyond 40 which have been approved by the University. Consequently I do not find any merit in the present petition. Since the petitioners are responsible for illegal admission of 40 more students they are bound to refund all the monies that have been received from those candidates. The petitioners are also liable to compensate 40 students who have been illegally admitted for causing loss of their one academic year, and the petitioners shall pay at the rate of Rs.10,000/- to each of the 40 candidates who has been admitted without approval of the University. Accordingly, the petitioners are directed to refund all the monies to the illegally admitted candidates, that is beyond 40 students approved by the University in DMLT course, and in addition, the petitioners are directed to pay compensation of Rs.10,000/- each to these candidates within one month from the date of this order. The petition is accordingly dismissed. Rule discharged. Interim relief if any granted shall stand vacated. However, I make no order as to costs.

5. The amount of enrolment fee and enlistment fees in excess of 40 students shall be refunded by the University within one month.

Dt: 29-03-2001 (P.K. Sarkrar, J)

/vgn